

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOHN NEWMAN,

Plaintiff,

v.

RICK HOYT and SCOTT COOK,

Defendants.

**Civil Action No.
3:17-CV-808 (TJM/DEP)**

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, Chief United States Magistrate Judge. In his September 19, 2017 Report, Recommendation and Order, Magistrate Judge Peebles granted plaintiff's *in forma pauperis* application and, after conducting a 28 U.S.C. § 1915(e) initial review, recommended that plaintiff's damage claims against defendants Hoyt and Cook in their official capacities, and his request for injunctive relief against the New York State Department of Corrections and Community Supervision, be dismissed, but that his complaint otherwise be accepted for filing, with leave to replead only with regard to the damage claims asserted against defendants Hoyt and Cook in their individual capacities.

Ord., Rep. & Rec., dkt. # 5, pp. 13-14 (dkt. # 6); see also id. p. 11.¹ Magistrate Judge Peebles also noted that “[i]n the event plaintiff does not avail himself of the opportunity to amend, this action will proceed with respect to plaintiff’s claims asserted against defendants in their official capacities to the extent plaintiff seeks prospective injunctive relief against those individuals.” Id. p. 14, n. 5.

Plaintiff did not file objections to the Report, Recommendation and Order [dkt. # 6], and the time to do so has expired. However, Plaintiff filed a “Motion to Replead and/or Amend,” [dkt. # 7] which, liberally construed, appears to be plaintiff’s amended complaint.

II. DISCUSSION

After examining the record, this Court has determined that the Report, Recommendation and Order is not subject to attack for plain error or manifest injustice.

III. CONCLUSION

Accordingly, the Court **ADOPTS** the Report, Recommendation and Order [dkt. # 6] for the reasons stated therein. Thus, it is hereby

ORDERED that plaintiff’s damage claims against defendants Hoyt and Cook in their official capacities, and his request for injunctive relief against the New York State Department of Corrections and Community Supervision, are DISMISSED. Plaintiff’s complaint is otherwise be accepted for filing, with leave to replead only with regard to the damage claims asserted against defendants Hoyt and Cook in their individual capacities.

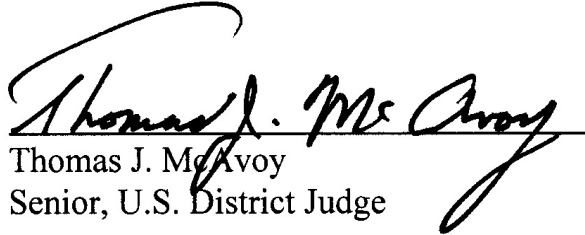
Plaintiff’s “Motion to Replead and/or Amend,” dkt. # 7, is referred to Magistrate

¹(“With respect to plaintiff’s claims asserted against defendants Hoyt and Cook in their official capacities seeking money damages, it is possible that plaintiff could assert viable damage claims against those individuals if he asserts the claims against defendants in their individual capacities.”)

Judge Peebles.

IT IS SO ORDERED.

Dated: October 20, 2017


Thomas J. McAvoy
Senior, U.S. District Judge